

**DEPARTMENT OF STATE REVENUE
REVENUE RULING ST 98-04**

June 2, 1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Sales/Use Tax – Purchase of Tangible Personal Property Used in the Operation and Management of Water/Wastewater Utility

Authority: IC 6-2.5-5-12, IC 8-1-2-1, Rule 45 IAC 2.2-4-11, IC 6-2.5-2-1, IC 6-2.5-4-1

The taxpayer requests the Department to rule on the application of sales/use tax to the purchase of tangible personal property used in the operation and management of a water/wastewater utility.

STATEMENT OF FACTS

The taxpayer is a contract service company for management and operations of water and wastewater utilities. The taxpayer understands that any material or supplies going into a municipally owned water or wastewater utility system are sales tax exempt. The taxpayer is managing and operating most of the water utility operations of a city in Indiana. The city pays the taxpayer a monthly fee and the taxpayer pays all the bills for the utility that are under the purview of the taxpayer's contract. The materials purchased by the taxpayer are for use in this water utility only. The utility is owned by the City's Water and Sewer Utility, an appointed body of the city.

The taxpayer submitted the following statements for Departmental review and ruling.

1. The taxpayer can purchase materials and supplies that will be used for the operation of the utility on a state sales tax exempted basis.
2. The taxpayer can receive refunds for the sales tax paid on materials purchased to date for the utility.
3. To receive tax exemptions on invoices from suppliers, the taxpayer needs to supply their Retail Merchants Tax ID number to that supplier.
4. The taxpayer will collect and report sales tax only on miscellaneous sales to the general public.

DISCUSSION

IC 6-2.5-5-12 states:

- (a) Transactions involving tangible personal property are exempt from the state gross retail tax, if:
- (1) the property is classified as source of supply plant and expenses, the pumping plant and expenses, or water treatment plant and expenses according to the uniform system of accounts which was adopted and prescribed for the utility by the Indiana utility regulatory commission; and
 - (2) the person acquiring the property is a public utility that furnishes or sells water in a retail transaction described in IC 6-2.5-4-5.
- (b) Transactions involving tangible personal property are exempt from the state gross retail tax, if:
- (1) the property is classified as collection plant and expenses, treatment and disposal plant and expenses, or system pumping plant and expenses; and
 - (2) the person acquiring the property is a public utility that collects, treats, or processes wastewater.

IC 8-1-2-1(a) provides:

- (a) "Public utility", as used in this chapter, means every corporation, company, partnership, limited liability company, individual, association of individuals, their lessees, trustees, or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment within the state for the:
- (1) conveyance of telegraph or telephone messages;
 - (2) production, transmission, delivery, or furnishing of heat, light, water, or power; or
 - (3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

The term does not include a municipality that may acquire, own, or operate any of the foregoing facilities.

Rule 45 IAC 2.2-4-11(d) further defines "public utilities" as organizations which are engaged in furnishing electricity, gas, water, etc., have the right to eminent domain, or are subject to government regulation in connection with the furnishing of public utility services.

It is clear from the above statutes and regulation that for the taxpayer to purchase tangible personal property used in the operation and management of a water/wastewater utility exempt from sales/use tax the taxpayer must be a "public utility" that furnishes and sells water in a retail transaction described in IC 6-2.5-4-5 and that collects,

treats or processes wastewater. For the taxpayer to qualify as a “public utility” in the State of Indiana the taxpayer must not only satisfy the provisions of IC 8-1-2-1, but, must, also, be registered with the Indiana Utility Regulatory Commission for regulatory purposes pursuant to Rule 45 IAC 2.2-4-11. Upon contacting the Indiana Utility Regulatory Commission it was found that the taxpayer was not registered with the Commission. In the instant case then, the taxpayer does not qualify as a “public utility” in the State of Indiana, hence, is not entitled to the exemption from sales/use tax as afforded by IC 6-2.5-5-12.

Further, IC 6-2.5-2-1 imposes sales/use tax on retail transactions made in Indiana. IC 6-2.5-4-1 defines a retail transaction as the transfer of tangible personal property for consideration. The taxpayer, therefore, is required to collect and remit sales/use tax not only on miscellaneous sales to the general public, but, also on all transfers of tangible personal property for consideration, including the sale of water. (It should be noted that the utility, also, remains liable for the collection and remittance of sales/use tax.)

RULING

The Department rules that the taxpayer’s purchase of tangible personal property used in the operation and management of a water/wastewater utility is subject to sales/use tax. Accordingly, the taxpayer cannot receive refunds for sales/use tax paid on materials purchased to date for the water/wastewater utility, nor can the taxpayer issue exemption certificates for the purchase of the materials. Further, the taxpayer is required to collect and remit sales/use tax on all retail transactions, including the sale of water.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer’s facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.